

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TINYBUILD LLC, a Washington limited
liability company,

Plaintiff,

v.

NIVAL INTERNATIONAL LIMITED, a
Cypriot corporation,

Defendant.

Case No. 2:19-cv-00805-TSZ

PLAINTIFF'S ANSWER TO
DEFENDANT'S COUNTERCLAIMS

Plaintiff, tinyBuild LLC ("tinyBuild" or "Plaintiff"), for its Answer to Defendant Nival International Limited's ("Nival" or "Defendant") Counterclaims, by and through its undersigned counsel, hereby admits, denies, and alleges as follows:

PARTIES

1. tinyBuild admits that Nival has a principal place of business in the Republic of Cypress. tinyBuild lacks information sufficient to admit or deny the remainder of the allegations in paragraph 1, and therefore denies those allegations that are not expressly admitted.

2. tinyBuild admits the allegations contained in paragraph 2.

FACTS

3. tinyBuild admits that Nival is engaged in the business of video game development.

PLAINTIFF'S ANSWER TO DEFENDANT'S
COUNTERCLAIMS - 1

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1 tinyBuild lacks information sufficient to admit or deny the remainder of the allegations in paragraph
2 3, and therefore denies those allegations that are not expressly admitted.

3 4. tinyBuild denies the allegations contained in paragraph 4.

4 5. tinyBuild admits that it entered into a contract with Nival on March 29, 2018. That
5 agreement speaks for itself. Except as expressly admitted, tinyBuild denies the allegations contained
6 in paragraph 5.

7 6. tinyBuild admits that it entered into a contract with Nival. That agreement speaks for
8 itself. Except as expressly admitted, tinyBuild denies the allegations contained in paragraph 6.

9 7. tinyBuild admits that it entered into a contract with Nival. That agreement speaks for
10 itself. Except as expressly admitted, tinyBuild denies the allegations contained in paragraph 6.

11 8. tinyBuild denies the allegations contained in paragraph 8.

12 9. tinyBuild admits that it entered into a contract with Nival. That agreement speaks for
13 itself. Except as expressly admitted, tinyBuild denies the allegations contained in paragraph 9.

14 10. tinyBuild admits that it entered into a contract with Nival. That agreement speaks for
15 itself. Except as expressly admitted, tinyBuild denies the allegations contained in paragraph 10.

16 11. tinyBuild admits that it entered into a contract with Nival. That agreement speaks for
17 itself. Except as expressly admitted, tinyBuild denies the allegations contained in paragraph 11.

18 12. tinyBuild admits that it entered into a contract with Nival. That agreement speaks for
19 itself. Except as expressly admitted, tinyBuild denies the allegations contained in paragraph 12.

20 13. tinyBuild admits that it entered into a contract with Nival. That agreement speaks for
21 itself. Except as expressly admitted, tinyBuild denies the allegations contained in paragraph 13.

22 14. tinyBuild denies the allegations contained in paragraph 14.

23 15. tinyBuild denies the allegations contained in paragraph 15.

24 16. tinyBuild denies the allegations contained in paragraph 16.

25 17. tinyBuild denies the allegations contained in paragraph 17.

26 18. tinyBuild denies the allegations contained in paragraph 18.

1 19. tinyBuild denies the allegations contained in paragraph 19.

2 20. tinyBuild denies the allegations contained in paragraph 20.

3 21. tinyBuild admits that Nival purported to send a Notice of Breach to tinyBuild, which
4 document is attached as Exhibit 2 to Nival's Answer & Counterclaim. Except as expressly admitted,
5 tinyBuild denies the allegations contained in paragraph 21.

6 22. tinyBuild denies the allegations contained in paragraph 22.

7 23. tinyBuild denies the allegations contained in paragraph 23.

8 **COUNT ONE: BREACH OF CONTRACT**

9 24. tinyBuild restates and incorporates by reference its answers to the foregoing
10 paragraphs.

11 25. The allegations in paragraph 25 are a legal conclusion to which no response is
12 required.

13 26. tinyBuild denies the allegations contained in paragraph 26.

14 27. tinyBuild denies the allegations contained in paragraph 27.

15 28. tinyBuild denies the allegations contained in paragraph 28.

16 29. tinyBuild denies the allegations contained in paragraph 29.

17
18 **COUNT TWO: BREACH OF THE COVENANT OF
GOOD FAITH AND FAIR DEALING**

19 30. tinyBuild restates and incorporates by reference its answers to the foregoing
20 paragraphs.

21 31. Paragraph 31 contains a legal conclusion to which no response is required.

22 32. tinyBuild denies the allegations contained in paragraph 32.

23 33. tinyBuild denies the allegations contained in paragraph 33.

24 34. tinyBuild denies the allegations contained in paragraph 34.

25 **REQUEST FOR RELIEF**

26 tinyBuild denies that Nival is entitled to any relief.

AFFIRMATIVE DEFENSES

By way of further answering Nival's Counterclaims, tinyBuild asserts the following affirmative defenses:

- A. Nival fails to state a claim on which relief can be granted.
- B. Nival has failed to mitigate any claimed damages.
- C. Nival's damages, if any, were caused by its own breach of the agreement, and other wrongful conduct by Nival.
- D. Nival's damages, if any, were proximately caused by persons or entities other than tinyBuild.
- E. Nival's damages, if any, are limited by the terms of the agreement.
- F. Nival's claims are barred by the doctrine of unclean hands.

tinyBuild expressly reserves the right to assert other or different affirmative defenses, as discovery remains ongoing, and because relevant information is or may be solely in the possession of tinyBuild and/or other third parties and thus not available to tinyBuild at the time of filing this Answer.

DEMAND FOR JURY TRIAL

tinyBuild hereby gives notice that it demands a jury trial on all claims against it.

PRAYER FOR RELIEF

WHEREFORE, having fully answered Defendant's counterclaims, Plaintiff prays for relief as follows:

- I. That Defendant's counterclaims be dismissed with prejudice;
 - II. That Plaintiff be awarded its attorney fees, costs and disbursements incurred herein;
- and
- III. For such other relief as this Court deems just and proper.

DATED this 30th day of July 2019.

GARVEY SCHUBERT BARER, P.C.

By s/ Diana S. Breaux
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Attorneys for Plaintiff tinyBuild LLC

CERTIFICATE OF SERVICE

I hereby certify that on July 30, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all parties who have appeared in this matter.

s/Kelly M. Mueller

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